

SBCivil Writ Petition No.1929/2006

Mandir Shri Narsinghji Maharaj
V.
Board of Revenue & Ors.

Date of Order :: 24th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioner.
Mr. P.S.Bhati, for the respondents.

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The application preferred on behalf of respondents No.5 to 7 for vacation of exparte interim direction dated 10.5.2006 came up for orders, however, being ripe for hearing, with the consent of counsel for the parties the writ petition itself is heard finally.

A writ in the nature of certiorari is sought by the petitioner to quash the judgment dated 13.2.2006 passed by the Board of Revenue affirming the judgment dated 30.3.2002 passed by Additional Divisional Commissioner, Jodhpur and the judgment dated 29.9.2000 passed by the Additional collector, Pali.

The factual matrix of the case necessary to be noticed is that the respondents No.5 and 6 by way of filing a revenue suit before the Assistant collector, Sojat claimed a decree to declare the land

bearing khasra No.6247 measuring 3.01 hectares in their khatedari. The suit was dismissed being withdrawn unconditionally on 8.1.1997. A suit of similar nature was also filed by the respondent No.7 and that too was dismissed being withdrawn unconditionally on 29.1.1998.

After dismissal of the suits the respondents No.5 to 7 preferred an appeal under Section 75 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as "the Act of 1956") giving challenge to the mutation made in favour of the petitioner on 7.2.1985 by Tehsildar, Sojat for the land referred in preceding para. The appeal preferred by the respondents No.5 to 7 was barred by limitation, therefore, the same was supported by an application under Section 5 of the Limitation Act. It is averred in the petition for writ that mutation in favour of the petitioner was entered after hearing the objections submitted by the respondents No.5 and 6 through their counsel. The appellate authority by its judgment dated 29.6.2000 dismissed the appeal after considering the record that was summoned from the subordinate court i.e. of Tehsildar, Sojat.

The respondents No.5 to 7 then submitted an application said to be under the provisions of Section 47 CPC to review the judgment dated 29.6.2000. The appellate authority by order dated 29.9.2000 accepted

the review petition without calling upon the petitioner on the count that the judgment sought to be reviewed dated 29.6.2000 was out come of exparte proceedings. The appellate authority while accepting the review petition recalled the order dated 29.6.2000 and remanded the case to Tehsildar, Sojat to decide the issue afresh with regard to entering of mutation by providing hearing to all the parties.

On knowing about the order dated 29.9.2000 the petitioner preferred an appeal before the Additional Divisional Commissioner, Jodhpur giving challenge to it mainly on following grounds:-

(1)the Additional collector was lacking jurisdiction to review the judgment dated 20.6.2000 as Order 47 CPC is having no application in the proceedings under the Act of 1956;

(2)the order dated 20.9.2000 is perverse being passed without calling upon the petitioner;

(3)notwithstanding the grounds above the judgment dated 29.6.2000 is revised lacking circumstances and ingredients to review an order as prescribed under Order 47 CPC; and

(4)on merits too the appellate authority erred while interfering with the order passed by the Tehsildar, Sojat on 7.2.1985.

The Additional Divisional Commissioner rejected the appeal preferred by the petitioner by judgment dated 30.3.2002 holding therein that no error was committed by the Additional Collector while accepting the review petition even without calling upon the petitioner as the judgment sought to be reviewed dated 29.6.2000 was passed in absence of the petitioner.

The Board of Revenue while rejecting the revision petition preferred by the petitioner giving challenge to the judgment dated 30.3.2002 also held that there is no miscarriage of justice as the case was remanded to the Tehsildar for re-inquiry and to decide the same afresh.

Hence, this petition for writ is preferred under Articles 226 and 227 of the Constitution of India on various grounds including that the courts below failed to appreciate that the power to review an order is creation of statute and the Order 47 CPC being having no application in revenue matters the Additional Collector travelled beyond the jurisdiction vested with him while reviewing the judgment dated 20.6.2000. Much emphasis is given by counsel for the petitioner to the fact admitted that the review petition was entertained and accepted without calling upon the petitioner as such the violation of principles of natural justice is on face.

Per contra, while meeting with the contention of counsel for the petitioner as stated above it is urged by counsel for the respondents No.5 to 7 that the judgment dated 20.6.2000 was passed in absence of the petitioner due to non response to the notice issued, therefore, the petitioner was rightly not called upon while reviewing the judgment dated 20.6.2000 under the order dated 29.9.2000.

Heard counsel for the parties.

It is the position admitted between the parties and as it is also apparent from the order dated 29.9.2000 that no notice was given by the appellate authority while reviewing the judgment dated 20.6.2000 to the petitioner. It is true that the judgment dated 29.6.2000 was passed in absence of the petitioner but it does not empower the appellate authority to recall its earlier order which was in favour of the petitioner and to pass an order afresh in absence of the petitioner. Irrespective of the fact that the order sought to be reviewed was passed in absence of the petitioner, it was obligatory for the appellate authority to call upon the petitioner while adjudicating the review petition as a valuable right accrued to him by order dated 7.2.1985 passed by Tehsildar, Sojat and that was maintained by judgment dated 29.6.2000. In the event of calling upon of the

petitioner he would have satisfied the appellate authority that the authority was not even possessing the powers to review the order.

Be that as it may, the appellate authority while reviewing the order dated 20.6.2000 by order dated 29.9.2000 breached the principles of natural justice and, therefore, the order passed to review the judgment dated 20.6.2000 is perverse. The Additional Divisional Commissioner as well as the Board of Revenue also failed to appreciate this position of law and, therefore, the order passed by Additional Divisional Commissioner, Jodhpur and the Board of Revenue which are under challenge in this writ petition are also perverse.

Accordingly, this petition for writ is allowed. The judgment dated 13.2.2006 passed by the Board of Revenue affirming the judgment dated 30.3.2002 passed by Additional Divisional Commissioner, Jodhpur and the order dated 29.9.2000 passed by the Additional Collector, Pali are hereby quashed. The appellate authority i.e. the Additional Collector, Pali is directed to hear and dispose of the review petition afresh by taking into consideration all the objections and contentions raised by the petitioner for opposing the review petition preferred by the respondents No.5 to 7. An opportunity is given to the petitioner to submit a reply to the review

petition with all just objections within a period of three months from today. The expeditious disposal of the review petition by the Additional Collector is expected.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.